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CLERK

No. 81-2178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,
Plaintiffs-Petitioners,

vs.

MR. A. T. WOOD,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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I hereby certify that 3 copies of the foregoing Petition have been served upon Mr. Martin J. Huelsmann, Assistant County Attorney, 304 City-County Building, Covington, Kentucky 41012, and Mr. Steve Beshear, Kentucky Attorney General, Capitol Building, Frankfort, Kentucky by the United States mail this ..... day of May, 1982.

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QUESTION PRESENTED

If a County *Clerk* knowingly accepts and records a deed in violation of State law to deprive a person of his constitutional rights (due process of law), is the County *Clerk* liable for damages?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. ————

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Plaintiffs-Petitioners,

vs.

MR. A. T. WOOD,

Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, Patricia and Eddie Thompson, Jr., respectfully pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on January 25, 1982; Petition for Rehearing denied on March 22, 1982.

OPINION BELOW

The Order of the Court of Appeals is annexed to this Petition as Appendix B, Page 3a. The Order denying Petition for Rehearing is annexed as Appendix A, Page 1a. The Memorandum Opinion and Judgment of the District

Court is annexed as Appendix E and D, Pages 6a-7a, respectively. The Order denying Motion for Reconsideration is annexed as Appendix C, Page 5a.

JURISDICTION

The Order of the Court of Appeals is annexed to this Petition as Appendix B, Page 3a. A timely Petition for Rehearing was denied on March 22, 1982, Appendix A, Page 1a, and this Petition for Certiorari was filed within ninety days of that date.

The Court's Jurisdiction is invoked pursuant to 28 U.S.C. 1254 (1).

STATEMENT

The instant action is a Pro Se complaint alleging, inter alia, that Mr. A. T. Wood, Kenton County Clerk, wilfully accepted and recorded deeds (in violation of K.R.S. 381.-240) to real property in possession of Petitioners (Eddie and Patricia).

Mr. Wood's purpose in accepting and recording a deed from Peoples Liberty Bank (July 27, 1978) to Mr. Slukich was to facilitate the bringing of criminal charges against Petitioner (Eddie Thompson) by Mr. Richard Slukich so that the Bank could gain possession of property the bank allegedly foreclosed on illegally.

Petitioner (Eddie) was involved in an election contest (1975), wherein Petitioner Eddie had alleged, inter alia, that Mr. Wood had destroyed the original return sheets of said election (within 2 weeks of said election).

Peoples Liberty Bank and their attorney (1976) had initiated an alleged illegal foreclosure proceeding against Petitioners (not at issue here).

Concurrently and during the foreclosure proceeding, the Bank and their attorney caused a number of unfounded criminal actions to be brought against Petitioners, to prevent Petitioners (at that time) from being able to properly defend the foreclosure action.

Among these criminal charges was the charge of criminal trespass brought by Mr. Richard Slukich, ex parte Peoples Liberty Bank.

The Bank gave Mr. Slukich a deed while Petitioners were living in their home and the foreclosure proceedings were going on. Mr. Wood accepted and recorded this deed (in violation of K.R.S. 381.240) to aid and assist in taking of personal and real property without due process of law.

After the foreclosure and in order to gain possession of Petitioners real property, the Bank filed a Forcible Detainer (1977) in the Kenton District Court, where a Writ issued in favor of the Bank. Petitioners (Thompsons) appealed to the Kenton Circuit Court. The Writ never executed.

Subsequently, the Bank moved the Kenton Circuit Court to dismiss the Appeal and their original claim (for possession) with prejudice, which was done. Appendix F, Page 9a.

Recognizing that they had lost their alleged right to possession of Petitioner's (Thompsons) home, the Bank had the Judge in the foreclosure action to sign an order and writ of possession (April 12, 1978) without notice to Petitioners (Thompsons).

While Petitioners were absent from their home, on July 19, 1978, Sheriff Deputies and Police Officers (Police Officers hired by the Bank at $5.00 an hour) executed the void "Order and Writ of Possession." Police Officers

(hired by the bank at the rate of Five Dollars ($5.00) an hour) occupied Petitioner's (Thompsons) home 24 hours a day until July 27, 1978, when friends of the Thompsons petitioned the Mayor and City Commissioners to get the police officers out of the Thompson's home.

Recognizing this unlawful seizure had failed, the Bank gave Mr. Slukich a deed to Petitioner's home for ONE DOLLAR ($1.00) and other good and valuable consideration. The consideration being that Mr. Slukich would maintain and prosecute criminal charges against Petitioner (Eddie), not at issue here.

With the foregoing knowledge, Mr. A. T. Wood accepted and recorded a deed from the Bank to Mr. Richard Slukich.

The record in the foreclosure proceeding (Kenton Circuit No. 31053) have been requested by the U.S. District Court in another proceeding in that Court.

The alleged illegal foreclosure is currently under attack in State court (not at issue here).

There has been no hearing in the Trial court or the Court of Appeals.

The dismissal by the Trial court is grounded on the assumption that Mr. Wood has unqualified judicial immunity (clearly erroneous). The Court of Appeals affirmed.

REASONS FOR GRANTING THE WRIT

The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of that right requires a reversal. *Hovey* v. *Elliot,* 42 LEd 215; *Anderson National Bank* v. *Luckett,* 321 U.S. 233.

The gravaman of the complaint here is that Respondent violated State Law (K.R.S. 381.240) in order to deprive Petitioners (Thompsons) of their real property (home) without due process of law.

Respondent's (Mr. Wood) claim that he had a right to record a deed from the Bank to Mr. Slukich is not borne out by the record.

From the Judgment of the Kentucky Court of Appeals concerning property the deed conveyed, it is obvious the Bank had nothing to sell Mr. Richard Slukich and particularly so while Petitioners were in residence and fighting the voidable foreclosure sale.

Where violation of State Law causes deprivation of rights protected by the Constitution and Statutes of the United States, cause of action is stated under 42 U.S.C. 1983. *Wirth* v. *Surles,* 562 F 2d 319.

When legal rights have been invaded under color of law, a claim is stated. *Monroe* v. *Pape,* 367 U.S. 167.

A complaint should not be dismissed if recovery can be had under any theory. *Conley* v. *Gibson,* — U.S. 41 (1957), *Foman* v. *Davies,* 371 U.S. 178 (1962).

Dismissal of an action on the basis of immunity is proper only when the official is absolutely immune, not when he has qualified immunity. *Williams* v. *Woods,* 612 F 2d 982 (1980) 5th Cir., *Barr* v. *Matteo,* 360 U.S. 564, 569.

There is no question that the Bank received a Judgment (bad or good) foreclosing Petitioner's (Thompsons) mortgage, and that the Bank lost the possessory action. Appendix F, Page 9a.

But, the foreclosure action *did not* divest title or confer possession. *Springfield Fire and Marine Ins. Co.* v. *Phillips,* 16 K.L.R. (abstract) 390; *Morgan* v. *Wickliffe,* 24 K.L.R. 1039, 70 S.W. 680 (1902).

Thus, the ultimate question here is simply: When Mr. A. T. Wood, pursuant to State Law accepted and recorded a deed to deprive Petitioners (Thompsons) of real property lacking due process of law, was Mr. A. T. Wood liable for damages sustained by Petitioners (Thompsons).

42 U.S.C. 1983 provides for a general right to sue for such invasion, and federal court may use any available remedy to make good the wrong done. *Davis* v. *Passman,* 442 U.S. 228.

Findings of immunity have thus been predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interest behind it. *Bradley* v. *Fisher,* 80 U.S. (WALL.) 335 (1872); *Imbler* v. *Pachtman,* 424 U.S. 409; *Procunier* v. *Navarette,* 434 U.S. 555; *Stump* v. *Sparkman,* 435 U.S. 349 (1979).

From our inquiry it may be concluded that the absolute immunity that Judges enjoy exist for the benefit of the judicial system and of the public and not for the Judge (or Court *Clerks*).

The rule of judicial immunity from damages, with its single bright line exception is as broad, but not broader than is necessary. Even so, the rule is a harsh one, laden

with potential for unredressed wrong. As such the scope of judicial immunity should not be extended beyond that necessary to preserve the Judge's independence of mind and judgment, for it is upon the need to protect these, and on that alone, that rule rests. *Sparks* v. *Duval County Ranch Co., Inc.,* 604 F 2d 978 (1979); *Dennis* v. *Sparks,* 101 SCt 183.

The applicable test for determining establishment of qualified immunity under 42 U.S.C. 1983 that is available to executive officers for acts performed in the course of his official conduct focuses upon not only whether the official had an objectively reasonable belief that his conduct was lawful, but also upon whether the official was acting sincerely and with a belief that he was doing right. *Gomez* v. *Toledo,* 446 U.S. 635.

The fate of an official with qualified immunity depends upon the circumstance and motivations of his actions, as established by evidence at the trial. *Imbler* v. *Pachtman,* 424 U.S. 409.

K.R.S. 381.240 states, "No county clerk or other county or state officer shall officially certify to any abstract or statement of title to lands in this state, where such lands are in the actual possession of another than the person or corporation shown to be the owner of the abstract or certificate, when such person in possession is claiming such lands under title adverse to that shown in such abstract or certificate."

The question of judicial immunity for a clerk who has committed a constitutional tort is also raised in 81-1525 styled *Eddie Thompson, Jr.* v. *Mary Ann Woltenberg.*

CONCLUSION

The decisions of the lower courts are clearly erroneous and should be reversed.

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 80-3598

EDDIE THOMPSON, JR.,
PATRICIA THOMPSON,

Plaintiffs-Appellants,

vs.

A. T. WOOD,

Defendant-Appellee.

ORDER

(Filed March 22, 1982)

Before: ENGEL, Circuit Judge, WEICK, Senior Circuit Judge, and COHN, District Judge*

No judge in regular active service of the court having requested a vote on the suggestion for a rehearing en banc, the petition for rehearing filed herein by the plaintiffs-appellants has been referred to the panel which heard

---

* Hon. Avern Cohn, United States District Judge for the Eastern District of Michigan, sitting by designation.

the original appeal. Upon consideration of said petition, the court finding no issues presented which have not been previously considered,

IT IS ORDERED that the petition for rehearing en banc be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 80-3598

EDDIE THOMPSON, JR. AND
PATRICIA THOMPSON,

Plaintiffs-Appellants,

v.

A. T. WOOD,
(COUNTY CLERK OF KENTON COUNTY),

Defendant-Appellee.

ORDER

(Filed March 31, 1982)

BEFORE: ENGEL, Circuit Judge; WEICK, Senior Circuit Judges; and COHN, District Judge.*

This appeal has been referred to a panel of the Court pursuant to Rule 9 (a), Rules of the Sixth Circuit. After examination of the briefs and the record, this panel agrees unanimously that oral argument is not needed. Rule 34 (a), Federal Rules of Appellate Procedure.

---

* The Honorable Avern Cohn, Judge, U.S. District Court for the Eastern District of Michigan, sitting by designation.

Plaintiffs-appellants, the Thompsons, are appealing from the District Court's judgment dismissing with prejudice the Thompsons' civil rights complaint. 42 U.S.C. § 1983, 1975. The Thompsons allege that defendant-appellee Wood was part of a racist conspiracy to take away the Thompsons' home. Wood, the county clerk, filed a deed giving title in the property to the bank even though Thompson had told Wood that the deed was void due to irregularities in the foreclosure proceedings.

In their complaint, the Thompsons ask for damages and declaratory relief. Wood is immune from damages since his action in filing the deed was at the direction of the county judge. *Slotnick* v. *Garfinkle,* 632 F.2d 163, 166 (1st Cir. 1980). The Thompsons are not entitled to declaratory relief because the complaint is attempting to convert a state cause of action into a federal one by conclusory allegations of conspiracy and race-motivated actions by Wood. *Ohio Inns, Inc.* v. *Nye,* 542 F.2d 673, 676 (6th Cir. 1976), *cert. denied,* 430 U.S. 946 (1977).

Accordingly, it is ORDERED that the judgment of the District Court be and hereby is affirmed under Rule 9 (d) 3, Rules of the Sixth Circuit, because the issues are not substantial and do not require oral argument.

ENTERED BY ORDER OF THE
COURT
/s/ JOHN P. HEHMAN
Clerk

A TRUE COPY
Attest:
JOHN P. HEHMAN, Clerk
By /s/ GARY McCARTHY
Deputy Clerk
Issued as Mandate: March 30, 1982
Costs: None.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION No. 78-96

EDDIE THOMPSON, JR.,

Plaintiff,

vs.

A. T. WOOD,

Defendant.

ORDER

(Filed July 22, 1980)

This matter being before the court on the motion of the plaintiffs to reconsider this court's final order and judgment of June 26, 1980, and the court being advised,

IT IS ORDERED that said motion be, and it is, hereby denied.

This 22nd day of July, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION No. 78-96

EDDIE THOMPSON, JR., ET AL,
Plaintiff,

vs.

A. T. WOOD,
Defendant.

JUDGMENT

(Filed June 26, 1980)

For reasons stated in the memorandum opinion filed concurrently herewith, and the court being advised,

IT IS ORDERED AND ADJUDGED that the complaint herein be dismissed, with prejudice, at the cost of the plaintiff.

This 25th day of June, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION No. 78-96

EDDIE THOMPSON, JR.,

Plaintiff,

vs.

A. T. WOOD,

Defendant.

MEMORANDUM OPINION

(Filed June 26, 1980)

The complaint in this action in essence states that A. T. Wood, County Clerk of Kenton County, Kentucky, recorded a Master Commissioner's deed conveying to the purchaser at a judicial sale certain real estate which had been owned by Thompson and foreclosed upon by a lending institution.

A copy of the deed is in the record, and the court has examined it. It appears to be regular on its face, having been executed by the Master Commissioner and approved by the court, pursuant to Kentucky law. K.R.S. 426.575.

Therefore, the court is of the opinion that the County Clerk had no discretion in the matter of recording it, and any knowledge he may have had of the underlying foreclosure proceedings or plaintiff's legal position that they were void is irrelevant. The mere fact of recording a deed is a ministerial function in which the County Clerk has no discretion. He is certainly not required to review the foreclosure proceedings underlying every Master Commissioner's deed to determine whether they are void. If he were to undertake to perform such a function, he would be constituting himself a de facto court of appeals. If plaintiff had desired to seek review of the foreclosure proceedings, his remedy was to file an appeal in the Court of Appeals of Kentucky. Therefore, the court is of the opinion that the complaint fails to state a claim upon which relief can be granted against the defendant, and that the defect cannot be cured by amendment. Judgment will enter accordingly.

This 25th day of June, 1980.

/s/ WILLIAM O. BERTELSMAN
Judge

APPENDIX F

OPINION RENDERED: May 2, 1980
NOT TO BE PUBLISHED

COMMONWEAL TH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.,

Appellants,

v.

PEOPLES LIBERTY BANK,

Appellee.

Appeal from Kenton Circuit Court
Honorable William R. Dunn, Judge
Action No. 33430

AFFIRMING

BEFORE: HAYES, Chief Judge, BREETZ and WILHOIT, Judges.

HAYES, CHIEF JUDGE. Eddie Thompson, Jr. and Patricia Thompson appeal from an order and judgment of the Kenton Circuit Court dismissing a forcible detainer

proceeding and the appeal therefrom. The Peoples Liberty Bank and Trust Company of Covington, Kentucky, filed the complaint for forcible detainer in Kenton Quarterly Court in September, 1977. The quarterly court rendered judgment for the bank on September 26, 1977 and ordered that a writ of restitution issue. The writ of restitution was never executed. The Thompsons appealed the quarterly court judgment to Kenton Circuit Court on September 28, 1977. No action was taken by either party to the proceeding until March 5, 1979 when the bank moved to dismiss the case as being moot on the grounds that the bank had obtained the property pursuant to another Kenton Circuit Court action and had conveyed same in July, 1978. The Thompsons filed a motion for a trial date on March 9, 1979. On March 13, 1979 the circuit court entered a judgment dismissing the case with prejudice as being moot. From this judgment the Thompsons appeal.

The Thompsons have proceeded pro se in these proceedings and apparently in the several actions in the various Kenton courts, obviously a substantial contributing factor to the Thompsons' confusion and lack of understanding concerning this proceeding. Apparently the Thompsons no longer have the property in question and ask this court to order the circuit court to put them in possession of such property. However, the simple fact is, that the property was not taken from them as a result of this case, but such was accomplished in a separate circuit court action. The Thompsons are attempting to attack a judgment over which this court has no jurisdiction. The circuit court ordered the action dismissed explaining to the Thompsons in a hearing that that was the most relief which it could grant, i.e. the bank's forcible detainer proceeding would be dismissed with prejudice. Since the Thompsons had not been

relieved of their property as a result of the forcible detainer proceeding but rather had been so relieved as a result of a circuit court proceeding, the dismissal of the forcible detainer proceeding could not result in the Thompsons being placed in possession of the property in question. The circuit court was not in error in dismissing the proceedings with prejudice. It is the bank not the Thompsons, as they perceive, who are prejudiced with respect to the proceedings.

Since we have no jurisdiction over federal courts, we will not comment on the issue raised pertaining thereto.

The judgment is affirmed.

ALL CONCUR.

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No. 91-2178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,
Petitioners-Appellants-Plaintiffs,

vs.

MR. A. T. WOOD,
Respondent-Appellee-Defendant.

RESPONDENT'S REPLY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Is a County Clerk who records a deed to real property pursuant to a judicial act of a Circuit Judge liable under 42 U.S.C. 1983.

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No. 81-2178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,
Petitioners-Appellants-Plaintiffs,

vs.

MR. A. T. WOOD,
Respondent-Appellee-Defendant.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

STATUTORY AUTHORITIES

42 U.S.C. 1983 — Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress.

KENTUCKY REVISED STATUTES

KRS 382.110 (1) — All deeds, mortgages and other instruments required by law to be recorded to be effectual against purchasers without notice, or creditors, shall be recorded in the county clerk's office of the county in which the property conveyed, or the greater part thereof, is located.

KRS 426.575 — Conveyance by Master Commissioner shall not pass any right, until it has been examined and approved by the court; which approval shall be indorsed on the conveyance and recorded with it.

SUPREME COURT RULES

Sup. Ct. Rule 17 (1) — A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has

not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Sup. Ct. Rule 34 (6) — Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the Court.

COUNTERSTATEMENT OF THE CASE

The Petitioners brought this action against the Respondent on October 11, 1978, alleging that the Respondent willfully accepted and recorded a Deed in violation of State law and 42 U.S.C. 1983.

Underlying this lawsuit was the fact that the Petitioners' home was foreclosed on by a Bank. On May 27, 1977, a Judgment was entered in Kenton Circuit Court in favor of the Bank against Eddie Thompson, Jr., et al, the Petitioners, which directed the sale of the property. On June 21, 1977, the sale of the property took place. On June 27, 1977, the Master Commissioner's report on the sale was confirmed by the Judge of the Kenton Circuit Court. On June 28, 1977, the Master Commissioner's Deed to the property was produced in the Respondent's office for recording. A. T. Wood, the Respondent, thru a Deputy Clerk, accepted and recorded the Deed.

The District Judge for the Eastern District of Kentucky at Covington dismissed the case on June 26, 1980, and the Sixth Circuit Court of Appeals affirmed in an Opinion filed March 31, 1982. Petitioners' Motion for a rehearing en banc was also denied by the Sixth Circuit.

ARGUMENT

First, the Respondent must assert that the Petitioners have subjected the Respondent to a frivilous appeal by including in this petition "burdensom, irrelevant, immaterial, and scandalous matter" in an attempt to cloud the issue of this case. Respondent therefore relies on Sup. Ct. Rule 34.6 and requests that this Petition be disregarded and stricken by the Court.

With all due respect to the Petitioners, the single issue in this case is whether a County Clerk who records a Deed to real property pursuant to a judicial act of a Circuit Judge is liable under 42 U.S.C. 1983?

The doctrine of Judicial Immunity is a well accepted concept adopted by this Court. As early at 1872, this Court held that a Judge should be free to act on his convictions without apprehension and further that this was of highest importance to a proper administration of justice. Bradley v. Fisher, 13 Wall 335, 80 U.S. 335, 20 L.Ed. 646 (1872). Recently, this Court has embodied the concept of Judicial Immunity into 1983 actions unless there was a clear absence of all jurisdiction. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed. 2d 331 (1978), Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967).

In Hendriksen v. Bentley, 644 F.2d 852 (10th Cir. 1981), stated at page 855:

> The doctrine of official immunity from § 1983 is based on two mutually dependent rationales:
>
> (1) the injustice, particularly in absence of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion;

> (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good. Butz v. Economou, 438 U.S. 478, 497, 98 S.Ct. 2894, 2906, 57 L.Ed.2d 895 (1978), quoting Scheuer v. Rhodes, 416 U.S. 232, 240, 94 S.Ct. 1683, 1688, 40 L.Ed.2d 90 (1974).

In Imbler v. Pachtman, 424 U.S. 409, 419 96 S.Ct. 984, 988, 47 L.Ed 2d 128 (1976) this Court stated:

> An absolute immunity defeats a suit at the outset, so long as the official's actions were within the scope of the immunity. The fate of an official with qualified immunity depends upon the circumstances and motivations of his actions, as established by the evidence at the trial.

This immunity which derives from judicial immunity may extend to persons other than a judge where performance of judicial acts or activity as an official aid of the judge is involved. Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), Gravel v. United States, 408 U.S. 606, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972).

Where a clerk is acting under the command of a court decree of explicit instructions from a judge there is absolute immunity. Williams v. Wood, 612 F.2d 982 (5th Cir. 1980); Slotnick v. Garfinkle, 632 F.2d 163 (1st Cir. 1980), Fowler v. Alexander, 478 F.2d 694 (4th Cir. 1973); McLallen v. Henderson, 492 F.2d 1298 (8th Cir. 1974).

This is exactly this case. The County Clerk, A. T. Wood, was duty bound by Kentucky law to record the deed pursuant to KRS 426.575 which states:

> Conveyance by Master Commissioner shall not pass any right, until it has been examined and approved by the court; which approval shall be indorsed on the conveyance and recorded with it.

As stated by Judge Bertelsman in his opinion:

> The mere fact of recording a deed is a ministerial function in which the County Clerk has no discretion. He is certainly not required to review the foreclosure proceedings underlying every Master Commissioner's deed to determine whether they are void. If he were to undertake to perform such a function, he would be constituting himself a de facto court of appeals.

Clearly, A. T. Wood was acting under command of a court decree of June 27, 1977, and when presented with the deed on June 28, 1977, had to accept the deed. The Judge who ordered the sale has Judicial Immunity and clearly the Respondent A. T. Wood has Immunity since he was acting pursuant to a Judicial Sale.

The Respondent, a Kenton County Clerk, is charged with the duty of accepting deeds, mortgages and other instruments. As such, when the Respondent acts pursuant to a command of a court decree or explicit instructions of a Judge there is absolute immunity. Williams v. Wood, 612 F.2d 982 (5th Cir. 1980); Slotnick v. Garfinkle, 632 F.2d 163 (1st Cir. 1980).

The filing of the deed herein was non-discretionary. The Respondent had to accept the deed. KRS 382.110(1).

As stated by Judge Bertelsman, "If the Plaintiff had desired to seek review of the foreclosure proceedings, his remedy was to file an appeal in the Court of Appeals of Kentucky."

CONCLUSION

It is respectfully submitted that both lower courts were clearly correct in their decisions. A. T. Wood as Clerk of the Kenton County Court was performing a ministerial deed in which he had no discretion. The deed was properly executed in accordance with the laws of the Commonwealth of Kentucky and Mr. Wood was required to record the deed pursuant to a Judicial Sale.

The Petition for a Writ of Certiorari should be denied since it does not meet any of the tests under Sup. Ct. Rule 17 (1).

Respectfully submitted,

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